

LETTER OF FINDINGS: 65-20221741
Indiana Overweight Proposed Assessment
For the Year 2022

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of the oversize/overweight penalty was wrong or that Motor Carrier presented mitigating circumstances which justified a reduction of the \$1,000 penalty.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-7; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of a \$1,000 oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of providing its customers heavy equipment transportation services. In addition, Taxpayer provides roadside towing and wrecker services.

According to the available information, Taxpayer operates 16 "power units" (trucks) and these vehicles are operated by 17 employee drivers.

Taxpayer had occasion to operate one of its vehicles in Indiana. The truck was stopped by the Indiana State Police while traveling on highway I-69. The tandem vehicle was found to be overweight. According to the Department's explanation, the violation stemmed from, "Excessive weight - 2501-5000 Lbs. over on an axle/axle group." In particular, the axle weight was 39,960 pounds which was 5,960 pounds over the permitted 34,000-pound limit

As a result, the Indiana Department of Revenue ("Department") issued a \$1,000 "civil penalty."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. An administrative hearing was held in order to permit Taxpayer's representative to further explain the basis for the protest.

Taxpayer objects to the \$1,000 penalty on the ground that the violation was inadvertent. Taxpayer explains that it was transporting an item of construction equipment. Although the weight of the equipment was known, the equipment was incorrectly loaded on Taxpayer's transport vehicle. According to Taxpayer, if the equipment had been properly loaded, the weight would have been more evenly distributed and no violation would have occurred. In other words, the violation occurred only because the construction equipment's weight was concentrated over one of the tandem axles.

This Letter of Findings is based on Taxpayer's written protest, the documentation within the Department's file, any documentation presented by Taxpayer, and consideration of Taxpayer's explanations.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$1,000 penalty is excessive and should be abated in whole or in part because the violation was a result of factors that were not wholly in Taxpayer's control. The issue here is whether Taxpayer has met its burden of establishing that the Department's assessment was unwarranted and/or excessive.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that "when [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a carrier "that transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a carrier to a civil penalty if the carrier "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by transporting a vehicle or load that is overweight or oversize. In this particular case, the Department cited to IC § 9-20-18-14.5(d) as authorizing the \$1,000 penalty.

A carrier that transports vehicles or loads subject to this article in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$1,000 penalty at issue is over and above any other penalty paid to the local jurisdiction.

In implementing and imposing the penalty, IC § 9-20-18-7(c) provides in part:

A court shall determine the extent of liability of the driver, carrier, shipper, or other party shown to be liable.

(b) The *department of state revenue* shall determine the extent of the civil penalties assessed under *section 14.5* of this chapter.

(c) It is a criminal or civil defense if a party can show that the party:

- (1) could not reasonably have known the actual weight of the load involved;
- (2) had no access to or control of the loading of an overweighted load[.] (*Emphasis added*).

The Department here acknowledges that IC § 9-20-18-7(a)-(c) is relevant in assessing an oversize/overweight violation. In this case, Taxpayer indicates that the unbalanced placement of the construction equipment was inadvertent and a matter not entirely in Taxpayer's control. Taxpayer may well be correct, but there is no

documentation clearly supporting that assertion.

Taxpayer presented an explanation and arguments which are not unreasonable. However, the Department notes that Indiana's oversize/overweight provisions are intended to limit the operation of vehicles which cause excessive damage to roads maintained and paid for by the state's taxpayers. If the construction equipment had been properly loaded, it is entirely possible that Taxpayer's vehicle would not have been overweight on the axle in question; however, the equipment was misplaced and the overweight violation - however inadvertent - occurred.

The Department is unable to disregard the officer's determination and conclude that Taxpayer met its statutory burden under of IC § 6-8.1-5-1 establishing that the penalty was *wrong*. Taxpayer is an experienced and knowledgeable motor carrier and well-versed in the requirements of transporting equipment on the state's roads and highways.

The Department declines to abate the penalty.

FINDING

Taxpayer's protest is respectfully denied.

February 14, 2023

Posted: 04/19/2023 by Legislative Services Agency
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